IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 21912 of 2007(H)

PETITIONER:

M.D.PATHROSE, MANICHERRY HOUSE,
AIMURY, KOOVAPPADY P.O.,
PERUMBAVOOR.

BY ADV. SRI.VIJU ABRAHAM
SRI.JOY C. PAUL
SRI.DOMINIC JOHNSON

RESPONDENTS:
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1. KERALA FINANCIAL CORPORATION,
PERUMBAVOOR BRANCH,
REPRESENTED BY ITS MANAGER.

2. DEPUTY TAHSILDAR (R.R),
KERALA FINANCIAL CORPORATION,
ERNAKULAM - 682 017.

3. THE DISTRICT COLLECTOR, ERNAKULAM.

BY SRI.P.PARAMESWARAN NAIR, SC, KFC
GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.21912/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF RECEIPT DATED 28.11.2006 FOR RS.3,26,500.00.

EXT.P2: TRUE COPY OF RECEIPT DATED 30.3.2007 FOR RS.6,34,337.00.

EXT.P3: TRUE COPY OF RECEIPT DATED 30.3.2007 FOR RS.25,39,163.00.

EXT.P4: TRUE COPY OF COMMUNICATION DATED 26.4.2007 OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF WRITTEN REPRESENTATION DATED 26.5.2007 SUBMITTED BY PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P6: TRUE COPY OF REPLY DATED 28.5.2007 SENT BY 1ST RESPONDENT TO THE PETITIONER.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 21912 OF 2007
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Dated this the 18th day of September, 2007

J U D G M E N T

Standing counsel takes notice for R1. Government Pleader takes notice for R2 and R3.

2. Heard counsel for both sides.

3. The petitioner had availed a loan from the first respondent and there was some default in repaying the said loan, consequent to which, recovery proceedings were initiated by the respondents. At that stage there was one time settlement scheme for the first respondent, which was availed of by the petitioner and the entire amount has been paid, the receipt of which has been acknowledged by the 1st respondent as per Exts. P1, P2 and P3. Thereupon the first respondent by Ext.P4 letter intimated the same to the 2nd respondent also. However, the title deed of the property mortgaged by the petitioner has not been released by the 1st respondent and this refusal is for the reason that clearance certificate has not been issued by the 2nd

respondent. The representation made by the petitioner in this behalf is Ext.P6. Standing counsel for the KFC submits that in terms of their procedure, in the absence of a clearance certificate from the revenue recovery authorities, title deeds cannot be released. The learned Government Pleader also submits that since revenue recovery proceedings were initiated, there is liability for the parties to pay collection charges, in the absence of which clearance certificate cannot be issued.

4. I consider this to be an extreme case of arbitrariness. This is a case where the KFC has accepted from the petitioner entire amount due to them in terms of the one time settlement scheme. If that be so, revenue recovery proceedings, though initiated against the petitioner, did not lead to recovery of any amount from the petitioner. If that be the position, in terms of the judgment of this court in **Bhaskaran v. Sub Registrar (2005(3) KLT 150)** collection charges cannot be levied from the petitioner. Even otherwise, by virtue of the proviso that is introduced to Section 71 of the Revenue Recovery Act, it is the institution on whose behalf recovery is made, that is liable to pay

the collection charges and not the defaulter. The KFC never made the payment of collection charges for accepting payment from the petitioner in terms of the one time settlement scheme, the benefit of which has been availed of by the petitioner. In the circumstances, the so called procedure of waiting for the clearance certificate cannot be a reason for delaying release of the documents submitted by the petitioner.

5. Thus it is totally an arbitrary act on the part of the first respondent to decline to release the documents and there is absolutely no justification for the same. Therefore, I dispose of this writ petition directing the 1st respondent to release the title documents of the petitioner, as expeditiously as possible, at any rate, within a period of two weeks of receipt of a copy of this judgment.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp